

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
NOVEMBER 25, 2002

MEMBERS PRESENT: LAWRENCE TORLEY, CHAIRMAN
MICHAEL KANE
LEN MCDONALD
MICHAEL REIS

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

PATRICIA CORSETTI
ZONING BOARD SECRETARY

MYRA MASON

ABSENT: STEPHEN RIVERA

REGULAR MEETING

MR. TORLEY: I'd like to call the November 25, 2002 meeting of the New Windsor Planning Board to order.

MINUTES DATED 10/28/02

MR. KANE: I move we accept the minutes of 10/28 as written.

MR. REIS: Second it.

ROLL CALL

November 25, 2002

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MR. KANE	AYE
MR. REIS	AYE
MR. MCDONALD	AYE
MR. TORLEY	AYE

November 25, 2002

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FOUNTAIN, GLENN

MR. TORLEY: There's no one present for this, we'll go on.

November 25, 2002

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GRIMALDI, LEONARD

MR. TORLEY: There's no one present for this, let's go to the next item on the agenda.

SHOTMEYER, KATHLEEN

Ms. Onda Camilliere appeared before the board for this proposal.

MR. TORLEY: Request for use variance to allow construction of three-family residence at 1111 River Road in a PI zone.

MS. CAMILLIERE: I'm Onda Camilliere. We have purchased 27 Cullin Avenue and next to it there's a vacant lot which we're in contract with, that's Kathleen Shotmeyer's lot. We did a survey and then we saw that the road between us was on our property, it's an unknown road with an unknown name and the highway department, the Town of New Windsor, Goshen, nobody can locate anything but it's maintained by the Town and there's a sewer through it but it's on our property, if we were to finish the purchase--

MR. TORLEY: This is 111 River Road?

MS. CAMILLIERE: Yes, this was already smaller than needed for, it didn't conform, it was a non-conforming lot to put a bid on so basically, I started the purchase of lot 2 which is owned by the County, okay. Now, if I put lot 2 and lot 1 in combination, I think that's a, and leave the existing road as an easement for the Town, I can use the rest of lot 1 for parking and lot 2. I have a map for everyone if they'd like to look at it.

MR. TORLEY: So there's a listed easement?

MS. CAMILLIERE: There's no listing.

MR. TORLEY: No easement for the sewer line?

MR. BABCOCK: There's got to be.

MS. CAMILLIERE: I called the highway department a couple times, I called Goshen, I called the Town, I spoke with the Town attorneys.

MS. CORSETTI: You spoke with me, right, you should

check with the Town Clerk's office and see if they have an easement on file.

MS. CAMILLIERE: We came across this when we did the survey, I tried to investigate as fast as possible. Irregardless, the Town is using the road with a sewer through it so we're not going to be able to retake the land to use it so the situation kind of changed so I got into the lot next to it.

MR. TORLEY: So what we're looking at is the lot you own is the lot that you have listed as proposed parking, is that it along with this, the lot we're discussing now is quad one on River Road, which is where you show the proposed residence?

MS. CAMILLIERE: Yes.

MR. BABCOCK: Can I have one of those?

MS. CAMILLIERE: I didn't see you back there, I'm sorry.

MR. KANE: Quick question. Your request for a use variance to allow construction of a three-family residence but it says two-family residence and salon.

MS. CAMILLIERE: A store and two family, yes, that was incorrect on the information that was on the pamphlet and what I wanted to pass around, I'll wait till you--

MS. CORSETTI: Somebody needs to change the notice of disapproval.

MR. TORLEY: Two family and store.

MS. CORSETTI: Michael, can you see that that's changed, please?

MR. TORLEY: Does the fact that it now has a commercial structure, commercial use in part of the building, does that change its use variance requirements?

MR. BABCOCK: I don't think that that's the primary use, that's the problem.

MR. TORLEY: If it was, the primary use was commercial, it would be allowed, a caretaker's apartment?

MR. BABCOCK: That's correct.

MR. TORLEY: One apartment?

MR. BABCOCK: That's correct.

MR. TORLEY: Since it's part of a two unit, doesn't matter.

MR. BABCOCK: No, I don't think that the hair salon is the primary use of the property.

MS. CAMILLIERE: It is for me.

MR. BABCOCK: The two family is the primary use, when you talk about a hair salon, I'm not sure what type of hair salon, how many stations you have or whatever but this is the first I'm hearing of the hair salon. That's why I needed this.

MR. KANE: Quick question. Have you spoken to anybody about the requirements for a use variance and what it's going to take to get one?

MS. CAMILLIERE: No, I haven't yet.

MR. KANE: It's one of the most difficult things that you can attempt to try to do.

MS. CAMILLIERE: Use variance meaning for the salon?

MR. KANE: Meaning that the Town, well, actually, for the, I think the salon PI zone wouldn't be a problem onto itself.

MR. BABCOCK: No, I don't think so.

MS. CORSETTI: It's not allowed in a PI zone.

MR. KANE: Basically, the Town divides itself into zones, certain things are allowed in certain parts of

Town. What you're trying to do in that particular section of Town is not allowed at all.

MS. CAMILLIERE: I understand what you're saying.

MR. KANE: And a use variance is very stringent as far as what the state requires you to prove to us for us to allow you to do that.

MS. CAMILLIERE: Right, go ahead, I'm sorry.

MR. KANE: I just want to make sure you understand.

MS. CAMILLIERE: Yes, I understand that part of it, I understand that it's zoned PI in that area and that--

MR. TORLEY: You may not really fully understand the size of the hill you're going to be attempting to climb. Our attorney can give you some more information on this as to the exact criteria, but by State law, we're bound by State law, even though we think it's a great idea, if you don't meet the criteria, we're not permitted to grant the variance.

MS. CAMILLIERE: Before we went any further, I wanted to ask a few questions. I just took some pictures of the area that's PI and basically next to and I will pass this around, first, we have Pete and Dolly's which I think is under contract and then we have the Town might be considering one of the homes historic, this is across River Road, two of Mike Lucas' buildings, one is a two unit apartment with a deli recently approved in the bottom and then there's are three family at 27 Cullin Avenue which is a legal three, then there's these two lots that are vacant, then there's a legal three family next to that so--

MR. TORLEY: That particular area though it's zoned PI by history has a whole mix of things, it's got everything including the kitchen sink in that particular section of Town. But the Town Board has zoned that as PI and there are very strict regulations about--what PI means is planned industrial, what can be in a planned industrial and what cannot be.

MR. KANE: Especially since you're going to purchase the second, what you would have to do, let's say you were zoned in an area where you were allowed to build a one-family home but you weren't allowed to build a two-family home, trying to keep the example as simple as possible, you would have to prove to us in dollars and cents that you could not sell that property as a one family home to anybody, not making a profit, profit has nothing to do with it, just sell it to somebody to use it as one-family home.

MS. CAMILLIERE: Would have to be a grievance kind of a thing.

MR. KANE: No, to purchase it, to change the use is almost impossible.

MR. TORLEY: One of the requirements that you're asking for relief from the law and one of the requirements is that there can't be a self-created hardship, it wasn't something you did yourself but buying a piece of property knowing that it's zoned for industrial and you want to do something else, that gets very close to being defacto self-created hardship. You know, you're not allowed to do something on the piece of property so you go ahead and buy it anyway.

MR. KANE: Even if it's in your family for years, it's a little bit different because you have always had it.

MS. CAMILLIERE: That's why I'm here.

MR. KANE: I think you really do need some legal counsel. We can go ahead and set you up for a public hearing, doesn't cost you anything, if you want to pursue this, but it's going to be a difficult thing.

MR. TORLEY: You really ought to speak with an attorney, let him advise you whether or not it's feasible to proceed, but what we can do is we can if the board approves it we can give you the right to a public hearing to say yes, you can go ahead and present it at a public hearing, doesn't mean you have to, you have the right, but not the obligation to go forward. We just want to let you know now that it could be very,

very tough and we urge you to seek an attorney.

MR. KANE: Usually somebody will come in with an attorney, they'll come in with a real estate appraiser to prove the value of the house and it's really, really difficult.

MR. TORLEY: And you have two big problems there is that the lack of reasonable return you have to show and the self-created hardship, which is going to be very difficult. If you're going to buy a piece of property and you know it's zoned PI and you want do something else.

MS. CAMILLIERE: What can I do with it?

MR. KANE: You need to talk to legal counsel.

MS. CAMILLIERE: Basically you're allowed to have a commercial space, could that be like storage units or--

MR. TORLEY: Best seek your own counsel. None of us are, except for our attorney, are attorneys, so I don't want to give you anything you might interpret as legal advice.

MS. CAMILLIERE: I came here for some advice and direction.

MR. TORLEY: The building inspector can show you some of the things that is or is not permitted in the zone.

MR. BABCOCK: The problem is the lot is too small.

MR. TORLEY: No matter what you want to do, you have to have, say you wanted to put in--

MS. CAMILLIERE: It's non-conforming in size.

MR. TORLEY: There's a lot of problems there. In fact, there are some lots in this Town that are simply too small, too oddly sided, too weird to be buildable.

MR. KANE: To do anything with so--

MR. TORLEY: You have to prove to us that you could do something appropriate with it, even though it's too small. I think you get the drift of what we're telling you. Speak to an attorney, if you wish to pursue this but should you wish to, I will entertain a motion to set her up for a public hearing.

MR. KANE: So moved.

MR. REIS: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. MCDONALD	AYE
MR. TORLEY	AYE

MR. TORLEY: You need a proxy since you're in contract.

MS. CAMILLIERE: Yes, I have a proxy for one of them but okay, thank you.

HARRIS, ANNE

Ms. Anne Harris appeared before the board for this proposal.

MR. TORLEY: Request for interpretation of residence as a single-family with two kitchens at One Riverview Avenue in an R-4 zone.

MR. TORLEY: What's the difficulty here?

MS. HARRIS: When my husband and I bought the house 14 years ago, it was listed as a multi-family and I just recently went to do a home equity loan and they told me it was an illegal two family. So they told me, my mother lives there, my husband and I bought the house primarily because it was listed as a two family because she lost everything in a fire at Squire Village 15 years ago, so we were, I was really shocked when I found out that it's an illegal two family all these years and I can't kick my 84 year old mother out now.

MR. KANE: Basically two kitchen scenario, Mike?

MR. BABCOCK: Yes.

MR. KANE: Do you have one, one electric meter, gas meter coming into the house?

MS. HARRIS: Yes. So that's what I want to do, interpretation of residence as single family with two kitchens.

MR. KANE: Your intent is to always use it even though it has two kitchens to always use it as single family home?

MS. HARRIS: Yes.

MR. TORLEY: By doing so even in this case we have to go through public hearing for an interpretation?

MR. KRIEGER: You have to, Zoning Board of Appeals cannot act without a public hearing.

MR. TORLEY: When you come to the public hearing, you're going to be asked to do that, you will stipulate that this is and will remain a single family house that's going to be carried over with the property so you can't sell it as a two family house.

MS. HARRIS: Okay.

MR. KRIEGER: When your mother no longer resides there, you can't get a tenant.

MS. HARRIS: But why wasn't that caught sooner though?

MR. KANE: A lot has to do with the bank, some banks don't require or do an in depth search, okay, and other banks nowadays lately we have been seeing a lot of it and with Mike in the building department they like to clarify everything, get it down that this is exactly what it is for safety reasons.

MR. TORLEY: By doing this, it means there's no problem in the future, take care of it once and problem solved.

MS. HARRIS: Even our tax bill has always been two family.

MR. KRIEGER: One of the things which you should be aware of is this the taxing authorities and building department are two separate entities. Taxing authorities tax is based on what they see. The building department acts on what, based on what ought to be there. It's two different questions. So you can have somebody taxed on what it is and it appears to be a two family taxed that way and that doesn't constitute approval on the part of the Town or the building department.

MR. KANE: But straightening it out allows you a grievance to go down and state that you're a one family instead of two.

MS. HARRIS: There's no way I can have it legally made as a two family because there are no legal two families in New Windsor.

MR. BABCOCK: When did you buy the house?

MS. HARRIS: 1988.

MR. BABCOCK: In 1987, we wrote a letter saying that it was illegal, apparently, the banks didn't care.

MR. KANE: Some banks are just--

MR. TORLEY: Depends how much you put down, if you're putting down 50%, they don't care.

MS. HARRIS: But you have to pay for it later on.

MR. TORLEY: Are there any other questions? So at the public hearing which we must have to go through this you have to say the same kind of thing that it's one meter, one electric bill, there are separate lockable, is there anymore than just a regular passage lock separating the two apartments inside the house?

MS. HARRIS: No because we have an opening.

MR. TORLEY: All these things go to show that it is really a one-family house, that you're obeying a much older code than ours in having your parents there, so that kind of thing. Outside entrances, those are the kinds of things we'll be asking you at the public hearing also and for everyone else, part of the thing you do when you're sitting for a public hearing, you must mail notifications to your neighbors. It's a legal form notice, talk to your neighbors when you do that so they're not afraid that you're going to put in a toxic waste dump. Let them know what you're going to do.

MS. HARRIS: You know what, though, my mother does get a separate Central Hudson bill, so would that mean there are two meters?

MR. KANE: Check into that.

MS. HARRIS: She does get a separate bill.

MR. TORLEY: See about getting it put back into one,

they'll do that for you.

MR. KANE: Accept a motion?

MR. TORLEY: If there are no other questions, of course.

MR. KANE: I move that we set up Anne Harris for a public hearing on her requested interpretation.

MR. REIS: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. MCDONALD	AYE
MR. TORLEY	AYE

CARALEX REALTY

Mr. Greg Shaw of Shaw Engineering appeared before the board for this proposal.

MR. TORLEY: Referred by Planning Board for 8 ft. maximum building height variance for construction of a warehouse on Industrial Way, PI zone.

MR. SHAW: For the record, my name is Greg Shaw and I'm with Shaw Engineering tonight and I'm representing Caralex Realty. I brought two drawings with me tonight, the first one I will only spend 15 seconds on, but it shows you the lands of Caralex Realty, which is at the present termination of Industrial Way and Verla at the intersection here. And you go down Industrial Way, you have a parcel of Caralex, which is on the left, you also have a larger parcel of Caralex which is behind working its way towards Silver Stream. There's an application before the planning board for a lot line change to add acreage, about 8/10 of an acre from the most easterly parcel to the westerly parcel. It's the westerly parcel that I want to bring up the second drawing and show you the reason for this variance. But the point I wanted to make out is that we're trying to add land to this parcel that we're requesting a variance on. We also have before the Planning Board a site plan application to construct a new warehouse building 31,750 square feet on the most westerly parcel. Again, as I pointed out, we just added or we're trying to add about 8/10 of an acre to that parcel to make it more buildable, while it's quite large and it is approximately 18.6 acres, the majority of it is DEC wetlands. What we really have after we add 8/10 of an acre to it is about 1.7 acres of buildable land so it's relatively eight even though the parcel is large. What you have with this existing warehouse which is also Caralex Realty is the termination of Industrial Way into a macadam area along the side of this building and a loading area to the back. Because they are owned by the same party, what we'd like to do is construct this building, put some loading docks on the northerly side, have a shared access. The problem is is that due to the construction in this direction, we're only able to provide a side

yard setback of 22 feet, I believe, just bear with me.

MR. KANE: Yes.

MR. BABCOCK: 22.

MR. SHAW: 20 foot side yard setback.

MR. TORLEY: That narrow setback.

MR. SHAW: Correct, we're asking for a building height of 25 feet. I would like to correct Michael's rejection that was based upon the site plan that was presented to the board and his notations reflect a variance of 8 feet. What we have done is lowered the building so we're really going to be asking for a variance of 3 feet, that being we're 22 feet from the property line, we're allowed to go 22 feet high, we'd like to go 25 feet high.

MR. KRIEGER: How high is Caralex's existing building?

MR. SHAW: That I believe is around 25 to 30 feet. What happens when you get into industrial buildings, you need a minimum height under the eaves in order to store goods and that's really the minimum they can live with.

MR. KANE: Greg, the additional 3 feet is not going to make it any higher than other building in the area?

MR. SHAW: No, the only buildings in the area are owned by Caralex or Verla Industries, which is Caralex. There are no other buildings on Industrial Way. You have Silver Stream to the west so there's really no one in the neighborhood.

MR. TORLEY: Since you're going to have a common access to two separate lots, do we get any problems with that as far as roads?

MR. BABCOCK: Not in a commercial, they can share a parking lot and whatever they want to share.

MR. TORLEY: As long as they both each individual

building meets its requirements for parking area.

MR. BABCOCK: That's correct.

MR. TORLEY: The only variance you're going to need is just the building height variance?

MR. SHAW: Correct, we're not going to be sharing parking lots, we're not going to be sharing loading areas, what we need to do is to be able to have the tractor trailers which pull out of the loading area to drive on the existing pavement of the northerly parcel, still Industrial Way, that's the only common right-of-way between the two parcels.

MR. REIS: Drainage issues, all that has been taken care of?

MR. SHAW: Preliminarily, yes, we've had one meeting with the planning board to reject the application. Once we get the variance, we'll return back to the planning board and we'll be addressing the drainage and the water and sewer issues. But as far as drainage, we have plenty of wooded land which belongs to Caralex Realty before it hits Silver Stream, so there really will not be any storm drainage issues from the parking lot.

MR. TORLEY: Any regulations because it's close to DEC?

MR. BABCOCK: No.

MR. KRIEGER: There's a hundred foot buffer.

MR. SHAW: Correct, we're outside the 100 foot buffer.

MR. KRIEGER: We're asking if there's a problem, he just indicate not only you can't build on the DEC wetlands, you also cannot build within a hundred feet of the edge of the wetlands.

MR. TORLEY: And the dashed line is the edge?

MR. SHAW: Correct, this line is the actual DEC delineated line coming back a hundred feet, this dashed

line is the edge of the buffer. We can come up to the buffer but cannot encroach without a DEC permit. We're not going to be needing a permit because we're not encroaching into it.

MR. TORLEY: Any other questions?

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: I make a motion that we set up Caralex Realty for their requested variance at Industrial Way.

MR. MC DONALD: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. MCDONALD	AYE
MR. TORLEY	AYE

ROUTE 32 NW REALTY LLC

Mr. Greg Shaw of Shaw Engineering appeared before the board for this proposal.

MR. TORLEY: Request for sign area and height variances for Kentucky Fried Chicken/Long John Silver for facade and freestanding signs at location (former Ponderosa) site at 334 Windsor Highway - C zone.

MR. SHAW: Thank you. Again, for the record, my name is Greg Shaw and I'm with Shaw Engineering tonight representing Route 32 NW Realty LLC. The applicant is the owner of the Kentucky Fried Chicken/Long John Silver's building which is under construction right now on Windsor Highway in the former Ponderosa site. If any of the board members have driven by that site, it has been demolished and the new building is under construction. What I'd like to do is ask the board to turn to the third page of the handout that I presented in this package and you get a feeling for the architecture of the building that as I said it's a combination Kentucky Fried Chicken/Long John Silver's and you'll see some of the signage that we're going to be asking for a variance on. Maybe the best place to start now that you have seen it is just flip the drawing over, you'll see the freestanding sign that we're asking for a couple of variances on, the first variance being for a sign height, we're allowed a maximum height of 15 feet, we're requesting a total of 20 feet, therefore, we're asking for a five foot height variance on the freestanding sign. Additionally, variance number 2 would be for the area of the freestanding sign, your zoning code allows a total of 64 square feet, we're proposing a 6 by 10 identification sign two sides for 120 square foot, a reader board which is 4 feet by 3 feet for 24 feet for a total of 144 square feet resulting in a variance of 80 square feet. So that's variance number 2, both of those again belong to the freestanding signs. Now, if we can move to the facade signs. Again, as I pointed out, the signage on the elevation of the building we can see that the signage is really part of the architecture, there's going to be a tower in each corner of the building and the signs are going to be

placed in the panels of that tower. We're allowed one sign for each business, there are two businesses inside that structure, therefore, we're allowed to have two facade signs. We're proposing a total of four. So our next variance would be for the number of facade signs that would be variances 3 and 4, variance 3 being for KFC, variance 4 being for Long John Silver's. Then we would go to the facade sign for KFC is variance number 3 and for Long John Silver's, it's variance number 5, which leaves us variances 4 and 6 which have to deal with the height of the facade signs. We're proposing a height of 9 feet high and if we flip through the materials, you'll see the architecture of the facade signs and their dimensions and your zoning ordinance allows a maximum sign height of 2 1/2 feet, therefore, we'd be requesting a variance of 6 1/2 feet for each of the four facade signs, two belonging to KFC, two belonging to Long John Silver's. So it's a lot of variances but it's really not that complicated, it's just that your sign ordinance has certain limitations to it.

MR. KANE: Trying to keep within that framework of the limitations, Greg, looking at this picture here, where would Route 32 be?

MR. SHAW: Route 32 would be out here so this is the front elevation.

MR. KANE: This would be the front elevation?

MR. SHAW: Yes, correct.

MR. TORLEY: The woman is walking towards the door, that's the Route 32 side?

MR. SHAW: Route 32 is here, that's the side entry.

MR. KANE: I can understand the facade signs on the front, then you have freestanding sign for the highway for people coming in, can we do away with the two, is it necessary to have the two? I mean, we're getting some extreme variances here, so to work with us a little bit, is that a necessary feature there when you have such a big sign on 32, you also have possibly two

extremely big signs on the front of the building, how necessary is it for the two on the side? It's the obvious question.

MR. SHAW: I know it's the obvious question and yes, it is important to have that side visible. The other side of the building is going to be the drive-through, so it's really not that important to have any signage on that side of the building, but with respect to the side of the building you're going to have the majority of the people coming in the side of the building probably even more so than the front, all right, so yes, we would like to have the four signs.

MR. KANE: Is there any way on the side of the building coming in that we can reduce the size of those signs on this side?

MR. TORLEY: How big are they asking physical size of the signs?

MR. SHAW: It's in the package.

MR. KANE: Height request is 9 feet.

MR. SHAW: 9 by 6.

MR. KANE: That's really big signs from the front, if there's something that we can do, I understand the retail value of having them on the side, but if we can reduce that size that would be more receptive on the side.

MR. SHAW: Well, there's one and only one size smaller, okay, than these facade signs, they're 5 feet by 7 feet as opposed to the 6 by 9, that's the smallest we could drop down to cause they don't make 'em any smaller.

MR. TORLEY: I'd point out that that's not really the board's problem.

MR. SHAW: I understand that but you asked me are there any smaller signs and that would be the minimum dimensions.

MR. TORLEY: Mike, we have an area requirement for facade signs, too, don't we?

MR. BABCOCK: No, it's actually a size, it's 2 1/2 by 10 or if you're a certain distance from the road, it could be three foot by ten.

MR. SHAW: What happens is Mike just pointed out you're allowed 2 1/2 feet by 10 feet so effectively, it's 25 square feet, we're allowed ten feet in length but we're only going 6 feet, so we're okay in that dimension, just that we're asking for 9 feet on the sketch that's before you and we're limited to 2 1/2, therefore, the variance is for 6 1/2.

MR. KANE: Personally not speaking for the other members, I don't have a problem with the size of them too much, just the extra ones on the side of the building.

MR. REIS: If you were to give up a sign or your client, what would be the least problematic for you?

MR. KANE: Problem is you've got two different enterprises.

MR. SHAW: What does the board feel is more offensive, the size of the signs or the number of the signs?

MR. KANE: The number.

MR. TORLEY: Number.

MR. MC DONALD: Number.

MR. TORLEY: I see how it does if it in with the architecture but you've got, you're asking also for a very large freestanding sign right in front of the building. Why do you need, it's just architectural to me, more fluff than your commercial attractiveness, if you're not going to use that, the primary entrance is off the side, the front entrance is not designed to be the standard entrance, is it?

MR. KANE: Not the front, that side piece.

MR. TORLEY: You see most people are going to come in here. Why is that there?

MR. SHAW: Because there's going to be parking on each side of the building.

MR. KANE: That's also facing the road so I can understand that.

MR. TORLEY: Well, I guess one or the other one side is the front of your building.

MR. SHAW: I'll speak to my client about this because I don't have the answer but would the board prefer to have two signs of the 6 by 9 dimensions or four signs of the 5 by 7.

MR. TORLEY: We'd prefer two signs of the code requirements.

MR. KANE: Two, personally two, I don't have a problem if we can lose the other two.

MR. TORLEY: If variances are granted, they are supposed to be the minimum variance practicable. You're asking for a lot on the extra two signs.

MR. KANE: But I think working with them we can do that.

MR. TORLEY: I agree with you. To me, again, personally, before we have the public hearing we'll get all the information, two larger signs would be easier for me to buy than four signs.

MR. REIS: Can I make a suggestion? Ask a question first? Greg, you're going to have your freestanding sign that faces your north-south traffic?

MR. SHAW: Correct.

MR. REIS: In front of the building, the front of your building in my opinion would kind of take care of that and you need I would think you'd need your north side,

the facade signs.

MR. SHAW: I understand your point. Basically, the freestanding sign would take care of the front elevation, it's the side that would--

MR. KANE: Right, either side doesn't matter to me.

MR. TORLEY: That's the kind of thing we want to let you know our concerns before the public hearing.

MR. SHAW: Absolutely.

MR. TORLEY: Move on to the freestanding sign part of it.

MR. KANE: Do you have anything else on the facade signs?

MR. MC DONALD: No, I feel the same way.

MR. TORLEY: My problem is not with the size of the sign. Why do you need the extra five feet? That's a pretty good spot there for a sign.

MR. SHAW: For visibility, if you notice the Rite-Aid sign just down the street, the board granted a variance on that about three years ago and that was 20 feet high. So I thought that that was consistent with the commercial strip.

MR. KANE: It is consistent.

MR. REIS: You've got a lot of congestion in this particular spot, it's much more visible, I would say. Would you agree with that, Greg?

MR. SHAW: It is more visible but there are other projects proposed for the remaining land from the former Ponderosa site down to Washington Green entrance.

MR. TORLEY: If they're empty, they have to meet the same requirements.

MR. REIS: I would make a recommendation if we can, if your client approves and you feel it's realistic and doable to reduce it somewhat, come down 3, 4 feet and still be, still need a variance but--

MR. TORLEY: How tall is the old Ponderosa sign, anybody remember?

MR. BABCOCK: No, it's gone.

MR. TORLEY: You could see that a long way.

MR. SHAW: They went out of business.

MR. TORLEY: I refuse to blame that on the sign.

MR. SHAW: Rite-Aid's still there.

MR. TORLEY: That would replace the other KFC?

MR. SHAW: Correct, there's no KFC in New Windsor.

MR. BABCOCK: It's Planet Wings.

MR. TORLEY: So, gentlemen, what other concerns do you wish to express at this time?

MR. KANE: I have nothing on the freestanding sign, if we can make an adjustment on the other two facade signs, that brings it down and we don't overwhelm the place.

MR. MC DONALD: No, I have nothing.

MR. TORLEY: Under those conditions, if there are no other questions, I will entertain a motion.

MR. MC DONALD: Make a motion that we set up NW Realty for a public hearing.

MR. KANE: Second it.

ROLL CALL

MR. KANE

AYE

November 25, 2002

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MR. REIS	AYE
MR. MCDONALD	AYE
MR. TORLEY	AYE

MR. REIS: You want to put in some stipulations?

MR. TORLEY: Nope, this is, we have let him know our concerns, Greg will talk to the principle.

MR. KANE: He's been here.

NUGENT, JAMES

MR. TORLEY: Request for 50 ft. road frontage and 80 ft. lot width variance to allow construction of single-family residence on Kayleen Drive in an R-4 zone.

Mr. Gregory Shaw of Shaw Engineering and Mr. James Nugent appeared before the board for this proposal.

MR. TORLEY: I want to welcome back Mr. Nugent who most of you know him as for many years served on this board and served as the chairman and taught me what little I know, so please.

MS. CORSETTI: He's the reason why we have a revised agenda, couldn't tell him to go away and come back next month.

MR. TORLEY: Please proceed.

MR. SHAW: I'll try and be quick because you have a long agenda tonight. Again, for the record, my name is Greg Shaw from Shaw Engineering. With me tonight is James Nugent who is going to be the applicant before the board. What we're asking for are two variances on a residential lot. You'll notice tax map that I have submitted to you it's located on Kayleen Drive encompasses two parcels of land, one which is approximately 100 feet by 200 foot in dimensions and another one which is relatively small, about 170 feet in length and 20 feet wide. Combined, what they constitute is really a flag lot. And what we're proposing is to get a variance in order to put a house on there and to do that we need two variances, one for lot width, which is measured at the front yard setback line. And as you'll notice with this 20 foot leg extending from Route 94 we're going to need a variance for that dimension and also with road frontage according to the rejection from the building inspector, we have to provide a minimum road frontage dimension, again, we're only providing 20 feet again because of a flag lot. We're not trying to create these parcels, these parcels exist, we're just trying to utilize them

and in order to do so for a house to be constructed on this half acre plus parcel, we need those two variances.

MR. TORLEY: Quick question. Are there in fact properties on lots 59, 58 and 57.1, are they built on?

MR. NUGENT: Yes.

MR. TORLEY: All three of them have buildings, so this, is there a road running down to those three now?

MR. NUGENT: It's a common driveway, it's a private drive.

MR. TORLEY: Is it feasible to combine this making all of them feeding off the driveway or now under a private road designation?

MR. BABCOCK: If he asked everybody and they say yes, which I'm sure they're going to say no, if all the neighbors that--

MR. TORLEY: If those other two neighbors agree, he would be permitted to use the, to share that driveway.

MR. BABCOCK: No, he would have to turn it into a private road, that's an existing shared driveway long before the rules.

MR. TORLEY: But so he would have to make the width and all that?

MR. BABCOCK: That's correct, then there would be a cost involved, they'd have to bring it up to private road specs.

MR. TORLEY: I don't know what the existing driveway is or what you're planning is or whether that would improve the value of the homes commensurate with the cost of doing it, if that were done, then he would need no other variances.

MR. NUGENT: I can never, I could never do that before.

MR. BABCOCK: Yes, you're correct, if it becomes a private road and goes through in front of his property, then he's got the lot width and everything else and road frontage.

MR. TORLEY: That's an option that you might have if you wanted to try it.

MR. NUGENT: Never been able to do it before. I've been there 60 years, never been able to do it before. I highly doubt it can be done now. Actually, there's more than three on that road, this is the last house that can be built on the road according to the private road standards.

MR. TORLEY: You can put 5 on a private road?

MR. BABCOCK: Six if they have road frontage on the Town road.

MR. TORLEY: And three of them do.

MR. BABCOCK: Right.

MR. TORLEY: Please help me out, so there's buildings on all these three and these two?

MR. NUGENT: This one faces 94, there's only these two. There's mine and next door neighbor's is here, I use the same road, this is not really, this retains the same width all the way up to the top.

MR. TORLEY: But that's a shared driveway.

MR. NUGENT: Yes, we have a maintenance agreement on it but it's a shared driveway. Maintenance agreement is everybody takes care of their own piece.

MR. TORLEY: I live on the private road, too, I know the difficulties you have. We'll go ahead with this, if you want to try and make it a private road, clean it up, this would be the time to do it. If you don't want to--

MR. NUGENT: No, it's not gonna happen.

MR. BABCOCK: One thing agenda says is 19-4-54.1, I don't think that's correct. I think that's Mr. Nugent's house.

MR. NUGENT: It is.

MR. BABCOCK: So we need to correct that.

MR. NUGENT: 75.1.

MR. BABCOCK: It's 19-4-75.1 is what you're in front of tonight with?

MR. NUGENT: Yes.

MR. BABCOCK: Instead of 54.

MR. TORLEY: A lot easier when you built your house, wasn't it, than it is now?

MR. NUGENT: My house has been there for 27 years.

MR. KANE: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: I've got a question, Greg, are there any issues with topo that we had to deal with here?

MR. SHAW: No.

MR. REIS: It's all level?

MR. SHAW: It's a buildable lot.

MR. REIS: I mean the access, is that going to impact anything?

MR. BABCOCK: No, it's fairly flat, it's just barely uphill, yeah.

MR. REIS: I'm good, thanks.

MR. TORLEY: Motion.

MR. KANE: I move we set up James Nugent for a public hearing on his requested variances.

MR. MC DONALD: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. MCDONALD	AYE
MR. TORLEY	AYE

FOUNTAIN, GLENN

MR. TORLEY: We'll move back to see if Glenn Fountain is in the audience.

Mr. and Mrs. Glenn Fountain appeared before the board for this proposal.

MR. TORLEY: Request for use variance/interpretation for existing single-family residence at 11 East Green Road in an R-1 zone.

MR. TORLEY: What can we do for you?

MR. FOUNTAIN: I have a single-family house and with that single-family house there's another dwelling that's a single-family house on the existing property along with what's listed as a storage shed but it's actually a small cottage. And I'm looking to fix the cottage to provide rental income. When the property was originally bought, it was listed and I have something from the Town that states that the property could be used as a rental income.

MR. TORLEY: Actually, what this says that the structure, I'm assuming the above-referenced structure is the cabin?

MR. FOUNTAIN: Yes.

MR. TORLEY: Was built in 1947, which is prior to Town adopted building and zoning code, therefore, there's no Certificate of Occupancy nor is one required. End of quote. That does not mean that they're saying that you can use it as a second family house.

MR. FOUNTAIN: It was listed as a storage shed but it does have a bathroom and well.

MR. TORLEY: This structure, let me pass these around.

MR. KANE: Separate gas and electric meter?

MR. FOUNTAIN: Yes, electric meter.

MR. KANE: How long has that been out there?

MR. FOUNTAIN: At this time, it hasn't been running.

MR. KANE: How long has it been out there?

MR. FOUNTAIN: Since we bought it.

MR. TORLEY: It's not now being used as a second residence?

MR. FOUNTAIN: No.

MR. TORLEY: Has it been used as a second residence within the last few years?

MR. FOUNTAIN: Maybe the last ten years.

MR. TORLEY: Not within the last--

MR. FOUNTAIN: It has been used in the last ten years.

MR. BABCOCK: But not the last two?

MR. FOUNTAIN: No.

MR. TORLEY: Well, there's a grandfather clause, things that existed before zoning can be maintained as non-conforming uses, but they have to be continuously used.

MR. BABCOCK: They're being very honest in what they're doing in telling us the right dates and the right times so--

MR. TORLEY: I have no doubt about that.

MR. REIS: Appreciate that.

MR. TORLEY: Because unless the use was continuous within the last up to within the last year, the grandfather status for this evaporates, as I recall.

MR. BABCOCK: Right.

MR. TORLEY: So it means right now because of that, you're starting from scratch, you cannot use, I'm sure our attorney will correct me if I'm wrong, you cannot use, it's pre-existing, it's building date as a reason why you should be allowed to do this use, which means you're starting from scratch asking for a two family use in a one-family zone.

MR. BABCOCK: We should ask Mr. Krieger to verify that because that's not the way I personally don't interpret the law that way, it's a re-establishment of a non-conforming use, it's not changing from one non-conforming use to another.

MR. KANE: Have you been paying taxes on that particular building as a residence basically?

MR. BABCOCK: Yes.

MR. KANE: That's been continued since you have--

MR. BABCOCK: Still today.

MR. TORLEY: If the lots, if it was split into two lots--

MR. BABCOCK: Well, there's some more concerns there, they would have to go to the planning board for a subdivision and then back here for area variances because they don't have road frontage.

MR. TORLEY: The point is that unless pre-existing status exempts them from the zoning code as far as the two family, then they're stuck with a use variance, are they not?

MR. BABCOCK: I don't believe so, Mr. Chairman.

MR. TORLEY: Unless the pre-existing use, the grandfather clause permits this. If that's not the case, then they're stuck with the use variance.

MR. KANE: If they're continuously paying taxes and the electric has been, and it's been used as a one family, I would think that's basically a continued use.

MR. TORLEY: You might be right, but we have to refer to our attorney whether that's the case because if it hasn't been used as a dwelling for several years--

MR. KRIEGER: Well, if you accept the principle of the taxing authorities taxed on, based on what they see, what's in the ground and if they have continuously taxed on that basis, that seems to be some substantial empirical evidence that it has in fact been used, so far as the zoning code is concerned that would be a question of interpretation as to whether or not the grandfather clause would--

MR. KANE: What I would do at the public hearing, talk to the tax assessor and get the records as far back as you can on the taxes paid on that piece of property, you need to find out whether the electric meter was put in is residential. Do you have two septs as well?

MR. FOUNTAIN: I believe so.

MR. TORLEY: Were you granted this interpretation, this is in essence a grandfathered in non-conforming use that would not exempt you from any other health code about septs, wells, all that would have to be taken care of.

MR. FOUNTAIN: Right.

MR. TORLEY: Just want to let you know.

MR. REIS: Accept a motion?

MR. KANE: If you can bring in some pictures for the public hearing?

MR. TORLEY: Yes.

MR. KRIEGER: The applicant should be advised he's in very close and substantial question, so you might seriously consider a legal assistance on this application, it's going to be very difficult for the Zoning Board of Appeals to deal with.

MR. TORLEY: Because there's two ways of going, you're asking for an interpretation that should the board, majority of the board find this that meets the pre-existing, non-conforming uses, that ends the question. If it does not, then you either go to a use variance or the alternative of splitting the lot into two would go to the planning board of those two options the planning board is going to be a lot easier trying to get a use variance.

MR. KANE: Which has nothing do with the interpretation.

MR. TORLEY: Should that fail you, you have a series of options and you may wish to speak to some legal counsel about that and as our attorney said, the case you're going to have to present is difficult, so the more ammunition you've got, the more data you have, the better you're going to be.

MR. KANE: If you can find the bill when the septic was put in going X back, when the well was put in, anything that you can get, letters from neighbors that it was used particularly before '67, if you can show it was used since '67 and sometime after '67, the more the merrier.

MRS. FOUNTAIN: If the reason that it hasn't always been used as a residence is we were trying to acquire more money to fix it up because some things--

MR. TORLEY: That's a very important thing to bring up.

MRS. FOUNTAIN: Because some things weren't done correctly.

MR. TORLEY: The reason it was not being used was that you were upgrading and maintaining the property, therefore, could not be occupied because you were fixing it.

MR. KANE: Legal counsel will give you those good ideas.

MR. REIS: We'd like to try to help you accomplish your

goals.

MR. TORLEY: But we have to follow the law. Gentlemen, do I hear a motion?

MR. REIS: Make a motion that we set up Glenn Fountain for his requested variance or interpretation for a single family residence at 11 East Green Road.

MR. MC DONALD: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. MCDONALD	AYE
MR. TORLEY	AYE

MR. TORLEY: Would you gentlemen agree to this interpretation and/or use variance?

MR. REIS: Yes.

MS. CORSETTI: That's what it says here.

MR. TORLEY: It wasn't what the actual motion was.

MR. KANE: Yeah, you can change the motion.

MR. MC DONALD: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. MCDONALD	AYE
MR. TORLEY	AYE

November 25, 2002

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GRIMALDI, LEONARD

MR. TORLEY: Is there anyone here for this application?
Seeing no one, we'll move on.

PUBLIC HEARINGS:

HARDEN, GREG

MR. TORLEY: Is there anyone in the audience who wishes to speak on this matter? Again, is there anyone who wishes to speak on this hearing? No? Would you please so note in the record.

MS. CORSETTI: For the record, let it be noted that we sent out 64 public hearing notices to adjacent property owners on October 22, 2002 and we have no one in the audience.

Mr. Greg Harden appeared before the board for this proposal.

MR. TORLEY: Request for 5 ft. side yard variance to construct two-car attached garage at 107 Parkdale Drive in an R-4 zone. Tell us what you want.

MR. HARDEN: I'm requesting a variance five foot on the side yard setback to construct a two car garage approximately 24 feet wide, 30 feet deep.

MR. REIS: To accomplish that, do you have to take down any trees? Are you going to create any kind of drainage issues that we have to deal with?

MR. HARDEN: No trees will be taken down, no drainage.

MR. MC DONALD: Not built over any easements, water or sewer?

MR. HARDEN: No.

MR. KANE: The building will look similar to other homes in the area, not going to change the aesthetics of the area?

MR. HARDEN: Correct.

MR. TORLEY: I'm looking at one photograph that has some stakes and strings, those show the area?

MR. HARDEN: Yes.

MR. TORLEY: And the other string is the border?

MR. HARDEN: That's my property line, probably should of used yellow tape.

MR. TORLEY: So this is a structure that could not be feasibly located in other any other spot in the property to need less of a variance?

MR. HARDEN: No.

MR. KANE: You're also sure that it's the measurement that you need?

MR. HARDEN: Yes.

MR. TORLEY: We're going by your data, so you spoke with your neighbors, they have no objection, they're not here?

MR. HARDEN: Yes.

MR. TORLEY: Do other buildings in your neighborhood have not identical by similar kinds of garages?

MR. KANE: I already asked that.

MR. TORLEY: You did the water and drainage?

MR. REIS: Yes.

MR. TORLEY: Gentlemen, do you have any other questions on this?

MR. REIS: Accept a motion?

MR. KRIEGER: If the two car garage were allowed, how much space would be left between it and the property line?

MR. HARDEN: Ten feet, actually a little bit more.

MR. TORLEY: Given the present conditions of the

property, still leave adequate room for firemen to get around the sides?

MR. HARDEN: Yes.

MR. REIS: Accept a motion?

MR. TORLEY: If there are no other questions, yes.

MR. REIS: Make a motion that we pass Mr. Harden's request for his variance at 107 Park Hill Drive.

MR. KANE: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. MCDONALD	AYE
MR. TORLEY	AYE

MODH, PARESH

Mr. Paresh Modh appeared before the board for this proposal.

MR. TORLEY: Request for 5 ft. 6 in. side yard and 7 ft. rear yard variances for existing shed plus 23 ft. rear yard variance for existing deck at 1136 Route 94 in an NC zone. Is there anyone in the audience who wishes to speak on this matter? Again, anyone in the audience? Let the record show there is none. Sir?

MS. CORSETTI: Wait a second. For the record, we sent out 34 notices to adjacent property owners on October 22, 2002 and nobody's here to participate with this one.

MR. TORLEY: Sir, tell us what the difficulty is, you wish to address, go ahead, you're looking for a, these are existing sheds, how long have the sheds been there?

MR. MODH: I have no idea. When I bought the property two years ago, it was there.

MR. KANE: Do you know of any complaints formally or informally about the sheds?

MR. MODH: No, nobody has complained.

MR. KANE: Have they created any water hazards or runoffs in the area?

MR. MODH: No.

MR. KANE: Are they similar in size to other sheds in the area?

MR. MODH: Yes.

MR. TORLEY: Are they, what kind of foundation are the sheds on, are they on concrete or slabs or what?

MR. MODH: I don't know actually.

MR. TORLEY: It would be economically infeasible for

you to move the shed to some point in your property that would meet the zoning requirements?

MR. MODH: I have no idea.

MR. TORLEY: It would be very difficult and awkward to try to move them?

MR. MODH: Yes.

MR. TORLEY: And this existing deck, again, this is the new deck, is that what I'm looking at?

MR. MODH: Yes, the existing was there.

MR. KANE: Again, any idea of the age of the deck, how long it's been existing?

MR. MODH: The existing deck when I bought the house it was there.

MR. TORLEY: But it was in poor condition and you needed to replace it?

MR. MODH: Yeah.

MR. KANE: You used the same footprint?

MR. MODH: Oh, yes.

MR. TORLEY: No.

MR. KANE: Little bit bigger.

MR. BABCOCK: It was 8 by 8, now it's 12 by 12.

MR. TORLEY: You felt that the additional distance of the deck made the deck more useful?

MR. MODH: Yes.

MR. KANE: And without the deck there, it would be a safety hazard coming out the back door?

MR. MODH: Yes.

MR. TORLEY: Are there other houses in your neighborhood that have similar, not necessarily identical but similar kinds of decks?

MR. MODH: Nobody has a deck on the, like that, I only have one neighbor.

MR. TORLEY: Only one neighbor and you had 34 letters?

MS. CORSETTI: It's 500 feet, so that's a long distance.

MR. TORLEY: This is not over any easements?

MR. MODH: No.

MR. KANE: Accept a motion?

MR. TORLEY: If there are no other questions, yes.

MR. KANE: Move that we approve the requested variance at 1136 Route 94.

MR. REIS: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. MCDONALD	AYE
MR. TORLEY	AYE

NEUMANN, PAUL

Mr. Paul Neumann appeared before the board for this proposal.

MR. TORLEY: Request for 1 ft. 9 in. rear yard variance for construction of residence on corner lot at 82 Hudson Drive in R-4 zone. Anyone that wishes to speak on this matter?

MS. CORSETTI: For the record on November 4 we sent out 33 public hearing notices to adjacent property owners and we have one person here.

MR. TORLEY: Tell us what your problem is.

MR. NEUMANN: Problem is that essentially the builder did not put the house exactly on the proper dimensions that he was supposed to and by doing so, we encroached on the setback boundary on the, it says rear yard, it's actually the side yard but--

MR. KANE: Corner lot two front yards?

MR. NEUMANN: Yes, sir.

MR. KRIEGER: Legally it's the rear yard but appears visually to be the side yard.

MR. NEUMANN: Exactly and essentially, I think you can tell from the pictures we had a small deck put on, there's a small little deck because I was trying to in the future I'd like to put a deck there which I know will require another variance, so don't worry about it at this time. In order to match the siding and I want to put a sliding gas door in so that's why we have the little set of stairs. And out back, there's another small deck there which I had informed you about at a previous hearing and that's where I'm at right in now.

MR. TORLEY: So the reason you have this difficulty is not that the lot is too small or the building too big but simply mis-sited by the contractors?

MR. NEUMANN: Yes.

MR. KANE: Obviously, it would be an economic hardship to fix the problem?

MR. NEUMANN: Yes, definitely.

MR. KANE: With the residence being moved that close were there any creation of water hazards or runoffs from the building?

MR. NEUMANN: Not that I can tell, sir, no.

MR. TORLEY: And this one foot 9 inch rear yard variance would not be considered a major variance request.

MR. KANE: Right.

MR. TORLEY: If there are no other questions from the board, I will open it up to the public. Sir, you had some questions?

MR. POWLES: Yes, Harold Powles. I had some questions, I'm just trying to gain a little bit of privacy since the house is actually 1.9 feet off, it actually changes the view that he has to my, since his house is on a corner, his back is my actually part of my front yard, my side yard and my rear yard.

MR. TORLEY: Which is your dwelling, sir?

MR. POWLES: This one right here so since his house is 1.9 feet this way, I'd like to dispute about the large house being on a small lot, actually, it's a 48 foot house on a 48 foot opening. You know what I'm saying? So it's actually a large lot, I mean, a large house, it's the biggest house he can put on that lot and with the house being the 1.9 feet down this way, this porch that he showed you a picture of gives it a perfect view of my two windows and my privacy in my back yard, you know what I'm saying, and I'm not asking you obviously ain't gonna move the house but I'm really, really surprised that Paul didn't do a variance prior because if you notice, he's putting a 48 foot house on a 48 foot lot. He ordered the house with a 6 foot glass

sliding door, obviously he was only, so when he ordered the house, he already needed a variance even if the house was in the right spot.

MR. TORLEY: According to the plans filed, it met all the requirements for the lot?

MR. BABCOCK: I think what Paul told us prior to the meeting tonight that he has an entry deck on each in the back and then the side and what I'm understanding is that that deck is, I'm not sure what the size of it is so he may need a greater variance than what we're talking about tonight cause we're only talking about the house. What size is the deck in the back where you need the variance, Paul?

MR. NEUMANN: The deck on that side is 4 feet wide and ends up that's not the one that he's talking about the one that's on the side is 4 feet wide, technically from the end of the deck to the bottom deck is 15 feet long but it's a long the side of the house.

MR. TORLEY: How much of entrance ramp pad is he allowed?

MR. BABCOCK: Typically, we say three foot for the door.

MR. POWLES: But he's got a 6 foot sliding door so that's not going to work.

MR. BABCOCK: He's 4 foot out and he's about I'm gonna say he's saying 15 foot with the stairs, so he's probably about 8 or 9, 10 foot wide, this deck's probably ten feet.

MR. NEUMANN: Yes.

MR. POWLES: I've got a couple pictures, this picture has a black line but that's what I see out of my kitchen window.

MR. KANE: Can we do anything in this public hearing with that deck since it's not on the denial?

MS. CORSETTI: We didn't know about it.

MR. TORLEY: All we're dealing with is the actual foundations of the house, C.O.s for the decks, et cetera, if they do not meet the code, you have to come back for another variance.

MR. POWLES: That's him.

MR. KANE: No, we're just saying that the decks are not in question tonight, we can't address them.

MR. POWLES: I don't know if I spoke to Mike but I thought that the variance guys incorporated both of them together, wasn't something like that mentioned?

MR. BABCOCK: That's what I figured is what we'd do.

MR. TORLEY: This 1 foot 9 inches doesn't cover the--

MR. BABCOCK: That's correct, he actually needs 5 foot 9 inches.

MR. KANE: But that wasn't, can we change that now because technically, it wasn't in the newspaper.

MR. KRIEGER: Yeah, the only thing you're changing are the dimensions of what's required.

MR. POWLES: There's nobody else here in this case here it only affects me.

MS. CORSETTI: Wait a minute, it says here this is the way it was written, existing single family residence with less than the allowable rear yard.

MR. KANE: Just want to make sure we cover everything.

MR. POWLES: It doesn't affect everybody else him being the corner lot, I'm directly behind, you know what I'm saying and like I say, 1.9 feet doesn't sound like a lot. I spoke to somebody else in the Town of Newburgh and you probably, you guys are probably going to laugh at this, but like George Meyers says, every foot in a development means a lot. Well, there's 82 houses on

Hudson, 41 on each side. If everybody got 1.9 feet, there'd be 16 less houses in the development. So I'm just trying to get a little privacy, you know what I'm saying, I don't want the guy to move his house, Paul knows that I don't want him to move his windows, you know what I'm saying.

MR. TORLEY: If some means can be arranged to screen them by vegetation.

MR. POWLES: Well, George Meyers addressed that, too, but if you look--

MR. KANE: George Meyers has nothing to do with this board.

MR. POWLES: George Meyers suggested to me to get a price.

MR. TORLEY: Price for what?

MR. POWLES: For shrubbery. If you look at his deck is so tall, it's already one story above me, when I look out my window, I look right across his deck so shrubbery--

MR. TORLEY: But if that deck was, if the whole thing was moved that direction five feet, will that make much difference how much you're seeing it?

MR. POWLES: It would put it in between my two windows but not really, you know.

MR. MC DONALD: Can I ask a question? I'm looking at this and we're talking about this deck right here, right, and in other words, he can, from this deck--

MR. POWLES: No, that's not the right picture.

MR. MC DONALD: Which one are we looking at? Can I see one that we're looking at?

MR. POWLES: That one there.

MR. MC DONALD: This is the back of your house?

MR. POWLES: Yes, that's the back of his house.

MR. MC DONALD: So the deck is a concern. What about the second floor windows?

MR. POWLES: I think you guys would laugh at me to ask to do something with them, like I'm saying, I'm no landscape contractor, the shrubbery is out of question because of the height of his property over top of mine. Actually, I did figure up a figure of what it would cost to put 8 by 10 foot shrubs, comes out to \$8,800 so I don't think that's a questionable thing to even reasonable thing to do. I really don't feel that you know my house I didn't do anything on my house, the mistake is not on my house, why should my house be compensated. I re-did my house and took all the trimable (sic.) shrubs out and like I was saying--

MR. TORLEY: Here's the situation, it's a balancing act, obviously this gentleman can't physically move his house.

MR. POWLES: I'm not asking him to do that, no.

MR. TORLEY: The question is the deck now how much, the deck we're talking about now how much of a variance would that deck require that we're talking about now?

MR. POWLES: This deck right here, he don't require a variance for that.

MR. TORLEY: If that doesn't require a variance, there's nothing we can do.

MR. BABCOCK: He requires the variance for the other deck in the back to make this.

MR. TORLEY: This is the deck that requires the variance.

MR. BABCOCK: No.

MR. KANE: No, this one here.

MR. BABCOCK: There's a deck on the end of the house side of the house, if you will.

MR. TORLEY: This is the deck that requires the variance?

MR. BABCOCK: That's correct.

MR. TORLEY: This is the one that you have difficulty with?

MR. POWLES: No, see what I would like since I can't put a fence high enough up, I'd like to see if he can put a 6 foot fence on his deck.

MR. TORLEY: Fence the deck?

MR. POWLES: Yes.

MR. TORLEY: That would be if that deck meets the code, we can't do anything about that, that's between you two gentlemen.

MR. BABCOCK: Larry, what he's actually saying is that if you took the deck and the house and moved it the 1 foot 9 that he's asking for the variance, the deck would be far enough ahead where he wouldn't be seeing where he could see around his property.

MR. POWLES: Don't let him move the deck, compensate by putting 6 foot privacy deck.

MR. BABCOCK: If he stands on the corner of his deck, he can see the whole back of his yard. If you took that deck and moved it ahead with the house two feet, he wouldn't be able to do that, that's what he's saying and he's saying if he could put a fence around the deck, not a fence, a privacy screen around the deck, that would make him happy.

MR. TORLEY: Two things we're doing the location of the house itself is pretty much we can't ask him to try to move that, there's the balancing act for moving a house two feet.

MR. BABCOCK: But based on the location of the house is where the door is so that made the deck where the door is.

MR. POWLES: Now that it's built, you can't have him move it, actually, that's the, the guy that put it in was putting it in 15 feet. Off the first time I questioned it and I said to the guys I thought you're supposed to stay inside them flags, this is when he's putting the excavator on after he dug the hole and he says he looks at 'em and says wow, yeah, maybe you're right, he says, so I went and got the phone book, I gave them the phone number to the building department, he says yeah, you're right, so then he goes out and gets the excavator and he starts digging, well, he didn't dig all the way. At the end of the day he says I've had it, this is as far as I'm going, this is the Town of New Windsor and you only got to get close in order to go for a variance. I've got to live with the mistakes, you know what I'm saying so--

MR. NEUMANN: Wish I heard that one. I never heard that.

MR. POWLES: Then one flag is still there, the foundation is halfway up, you can see that the house is completely out, so they're standing around having coffee, they're looking and says man, that things out, young kid goes over, gets on the excavator, scoops the mark out, throws it off the side and away we go.

MR. TORLEY: I don't know what to tell you on this.

MR. BABCOCK: Mr. Chairman, I haven't talked to the applicant, I wanted to do that and go talk to Paul because I've dealt with him through the whole project, my guys have, if he's willing to do something like that, just to make good neighbors, then there's no issue.

MR. NEUMANN: Definitely want to make good neighbors.

MR. TORLEY: So that's between you two folks, that issue. Right now, what we're dealing with is the 4 foot 9 inch variance then.

MR. BABCOCK: Five foot seven is what I come up with.

MR. MC DONALD: For the one on the side, right?

MR. BABCOCK: Yes.

MR. KANE: Other one doesn't need anything.

MR. BABCOCK: Typically in his rear yard.

MR. TORLEY: In this case, it's a side yard.

MR. TORLEY: We're changing the requested variance to a 5 foot 7 inch variance.

MR. BABCOCK: it's 5 foot 9.

MS. CORSETTI: You have to change the notice of disapproval, please.

MR. BABCOCK: I'll give you a new copy tomorrow.

MR. TORLEY: So far as the deck material you guys can work that out. I'm going to close the public hearing now and open it back up to the members of the board. Gentlemen, do you have any other questions?

MR. MC DONALD: Accept a motion?

MR. TORLEY: Yes, if there are no other questions.

MR. MC DONALD: Make a motion we grant Paul Newman his request for the 5 foot 9 inch rear yard variance.

MR. KANE: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. MCDONALD	AYE
MR. TORLEY	AYE

MR. REIS: Can we add that it includes the deck?

MR. TORLEY: We gave him a variance for the back yard, what he's doing with it--

MR. BABCOCK: Right, it's the variance because of the deck and the house, the house is 1 foot 9 so he needs 5 foot 9 variance.

MR. KANE: One foot nine inches for the house, 4 foot for the deck.

MR. TORLEY: For a total of 5 foot 9 inches.

CUBITO, ROSE ANN

Mrs. Rose Ann Cubito and Mr. John Antonelli appeared before the board for this proposal.

MR. TORLEY: Request for interpretation and/or use variance of an existing second apartment at 15 Hillside Avenue an R-4 zone. Anyone here wishing to speak on this matter in the audience? Seeing no one, let the record so note.

MS. CORSETTI: For the record, we sent out 24 public hearing notices to adjacent property owners and if I can find it, here it is, on November 12.

MR. TORLEY: Okay, so?

MRS. CUBITO: I'm Rose Ann Cubito, this is my nephew, John Antonelli.

MR. ANTONELLI: What she wants to do, it's an existing apartment, it's been there since the '50s, all right, and we just, she bought the house about 15 years ago and had a title search on the whole thing and I guess they didn't come up with, there's some kind of a C.O. problem or some kind of a problem with the permits and stuff to get other apartment in, its been a pre-existing since the house just about when it was built in 1950, she does have letters from people that, rentals, it's been consistently rented since the house has been built.

MR. KANE: Have you presented those letters.

MRS. CUBITO: Yes.

MS. CORSETTI: Can you present the copies?

MR. ANTONELLI: Sure, what she's looking for is to, she, right now, is in the process of selling the house and she just wants to get the proper--

MR. TORLEY: I'm in receipt of two manuscripts, one from a Lorraine Dekoto (phonetic), which we'll receive and file and a Rose Marie Iuzzini. First is from Miss

Dekoto, states she and her husband at the time resided in this apartment during the time span of spring of 1963 through June of '64 and location and address to contact and the second one.

MRS. CUBITO: That should be the first.

MR. TORLEY: The second one from Iuzzini.

MRS. CUBITO: Her husband passed away and she remarried.

MR. TORLEY: This is to let you know that I was the first tenant to rent the apartment at 15 Hillside Avenue in 1959, at that time, my name was Iuzzini. And they've got a contact point.

MR. KANE: This has been used as an apartment since you've had it?

MR. ANTONELLI: Yes.

MR. TORLEY: Has been rented or offered for rent continuously?

MR. ANTONELLI: Yes.

MRS. CUBITO: Yes.

MR. KANE: Any complaints informally or formally about the apartment?

MR. ANTONELLI: No.

MR. TORLEY: How has it been carried on the tax roles, as a two family?

MR. ANTONELLI: Yes.

MR. TORLEY: Gentlemen, do you have any other questions?

MR. KANE: No. Is there separate meters?

MRS. CUBITO: Yes.

MR. KANE: Electric and gas meter?

MR. ANTONELLI: Yes.

MR. TORLEY: So it's your intention, you have data to support that this was a two-family dwelling at the time the zoning was passed, pre-existed the zoning, has been maintained as a two family continuously, either with a renter or offered for rent since then?

MR. ANTONELLI: Yes.

MRS. CUBITO: Yes, it has. I just have my current tax statements.

MR. TORLEY: Current tax is as a two family?

MRS. CUBITO: Yes.

MR. TORLEY: Gentlemen, do you have any other questions?

MR. MC DONALD: No.

MR. TORLEY: This is going to be in the nature of an interpretation.

MR. REIS: I make a motion that we give Rose Ann Cubito a positive interpretation for a second apartment in her residence at 15 Hillside Avenue.

MR. TORLEY: That interpretation means that it pre-existed zoning.

MR. REIS: Pre-existed.

MR. TORLEY: Pre-existing, non-conforming use that has been maintained continuously.

MRS. CUBITO: Yes.

MR. KANE: Second it.

ROLL CALL

November 25, 2002

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MR. KANE	AYE
MR. REIS	AYE
MR. MCDONALD	AYE
MR. TORLEY	AYE

POST, WILLIAM

Mr. William Post appeared before the board for this proposal.

MR. TORLEY: Request for 6 ft. 6 in. rear yard variance to construct deck at 1 Valewood Avenue in an R-4 zone.

MR. TORLEY: There being no one in the audience.

MS. CORSETTI: Wait a second, we did send out 83 public hearing notices on November 6 and no one's here.

MR. KANE: Tell us what you want to do.

MR. POST: I wanted to build a deck from the side of the house come out 12 foot and 16 wide, long.

MR. TORLEY: This deck would reach to the pool?

MR. POST: No.

MR. KANE: How far off the ground is the deck?

MR. POST: Like 15 inches off the ground.

MR. KANE: Is there an existing doorway coming out?

MR. POST: Yes.

MR. KANE: So you do need the deck there as a safety issue?

MR. POST: Yes.

MR. KANE: Will you be creating any runoffs or water hazards with the building of the deck?

MR. POST: No.

MR. KANE: Will you be cutting down any trees?

MR. POST: No.

MR. KANE: And the deck itself will not change the

appearance of the neighborhood, it will be similar to other decks in the neighborhood?

MR. POST: Yes, it's not coming out as far as the door or the fence because it's only 12 foot off the house.

MR. MC DONALD: Is the deck going to be over any water or sewer easements?

MR. POST: No.

MR. TORLEY: Any other questions on this matter?

MR. MC DONALD: Accept a motion?

MR. TORLEY: Yes.

MR. MC DONALD: Make a motion we grant Mr. William Post's request for 6 foot 6 inch rear yard variance to construct his deck at 1 Valewood Avenue.

MR. POST: It's Valewood Drive.

MS. CORSETTI: We'll change it for you.

MR. REIS: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. MCDONALD	AYE
MR. TORLEY	AYE

FORMAL DECISIONS:

1. GMH MILITARY HOUSING

MR. KANE: I move we accept the formal decision as written.

MR. MC DONALD: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. MCDONALD	AYE
MR. TORLEY	AYE

MR. TORLEY: Motion to adjourn?

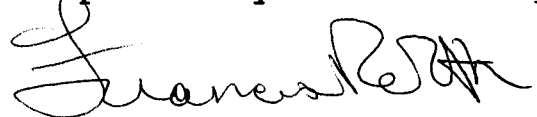
MR. REIS: So moved.

MR. KANE: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. MCDONALD	AYE
MR. TORLEY	AYE

Respectfully Submitted By:



Frances Roth
Stenographer